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10-30-1985

10-30-1985 Justice O'Connor, Per Curiam

Sandra Day O'Connor
US Supreme Court Justice

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HAB

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

DELAWARE v. WILLIAM A. FENSTERER

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF DELAWARE

No. 85-214. Decided November —, 1985

PER CURIAM.

In this case, the Delaware Supreme Court reversed respondent William Fensterer's conviction on the grounds that the admission of the opinion testimony of the prosecution's expert witness, who was unable to recall the basis for his opinion, denied respondent his Sixth Amendment right to confront the witnesses against him. 493 A. 2d 959 (1985). We conclude that the Delaware Supreme Court misconstrued the Confrontation Clause as interpreted by the decisions of this Court.

I

Respondent was convicted of murdering his fiance, Stephanie Ann Swift. The State's case was based on circumstantial evidence, and proceeded on the theory that respondent had strangled Swift with a cat leash. To establish that the cat leash was the murder weapon, the State sought to prove that two hairs found on the leash were similar to Swift's hair, and that one of those hairs had been forcibly removed. To prove these theories, the State relied on the testimony of Special Agent Allen Robillard of the Federal Bureau of Investigation.

At trial, Robillard testified that one of the hairs had been forcibly removed. He explained that, in his opinion, there are three methods of determining that a hair has forcibly been removed: (1) if the follicular tag is present on the hair, (2) if the root is elongated and misshaped, or (3) if a sheath of skin surrounds the root. However, Robillard went on to say that "I have reviewed my notes, and I have no specific knowledge as to the particular way that I determined the hair was